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FISCAL IMPACT STATEMENT

LS 7549

BILL NUMBER: HB 1510

NOTE PREPARED: May 11, 2007

BILL AMENDED: Apr 29, 2007

SUBJECT: Gaming.

FIRST AUTHOR: Rep. Van Haaften

FIRST SPONSOR: Sen. Merritt

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: *Gambling Enforcement:* The bill establishes the License Control and Gaming Control Divisions within the Gaming Commission. The bill authorizes the revocation of a lottery retailer's contract with the Lottery Commission, a charity gaming license, a retail merchant's certificate, a tobacco sales certificate, or an alcoholic beverage permit for violations of certain statutes. It provides that a second unrelated conviction for professional gambling, maintaining a professional gambling site, or promoting professional gambling is a Class C felony rather than a Class D felony. The bill authorizes the possession of an antique slot machine that is used for decorative, historic, or nostalgic purposes. It provides that possessing an electronic gaming device is a Class A infraction. It also provides that knowingly or intentionally accepting or offering to accept, for profit, money or other property risked in gambling on an electronic gaming device maintained by the person is maintaining a professional gambling site, a Class D felony.

Charity Gaming: The bill makes numerous changes to the laws concerning charity gaming licenses and the participants in charity gaming. It authorizes the Gaming Commission to issue an annual license permitting a qualified organization to sell pull tabs, punchboards, and tip boards at any time on the premises owned or leased by the qualified organization and regularly used for the activities of the qualified organization. It also authorizes an annual charity game night license. The bill specifies that pre-elementary childhood development programs and state educational institutions are qualified organizations. It specifies the conditions for conducting raffles and door prize drawings applicable to a candidate's committee. It also makes certain changes concerning manufacturers and distributors of charity gaming supplies. The bill permits certain rent expenses to be deducted from gross revenues for purposes of calculating fees for renewing charity gaming licenses.

Effective Date: Upon passage; July 1, 2007.

Explanation of State Expenditures: *Gambling Enforcement:* The bill establishes the License Control Division and the Gaming Control Division under the Indiana Gaming Commission (IGC) and specifies the types of personnel that must be employed by these divisions. Based on the assumptions explained below the total personnel cost of both divisions could range from \$1.1 M to \$1.2 M annually. This additional cost would be paid from the Charity Gaming Enforcement Fund, and would reduce by \$1.1 M to \$1.2 M annually the transfer from this Fund to the Build Indiana Fund (BIF)

The bill provides that the expenses of both divisions are to be paid from revenue in the Charity Gaming Enforcement Fund. Under current statute, the cost of IGC administration and enforcement of charity gaming is paid from this Fund. Revenue from Charity Gaming License fees and the Charity Gaming Excise Tax is, under current statute, deposited in the Fund. Amounts in the Fund in excess of what is needed to pay administrative costs is distributed to the BIF. In FY 2006, revenue to the Fund totaled about \$5.4 M, with the FY 2006 transfer from the BIF totaling about \$3.5 M.

License Control Division: The License Control Division is established by the bill to conduct administrative enforcement actions against persons holding a charity gaming license, a retail merchant's certificate, a tobacco sales certificate, or an alcoholic beverage permit and who are suspected of violating the professional gambling statute, the promotion of professional gambling statute, or provisions of the bill relating to the possession of, or profiting from the possession of, electronic gaming devices. The bill requires the Division to carry out license revocation actions against charity gaming licensees. The bill also requires the Division to carry out, in behalf of the Department of State Revenue (DOR) or the Alcohol and Tobacco Commission (ATC), revocation actions against retail merchant's certificate holders, tobacco sales certificate holders, and alcohol beverage permit holders. The bill requires these actions to be carried out by the Division under a memorandum of understanding (MOU) between the IGC and both the DOR and ATC. The MOUs must be entered into before January 1, 2008. The bill also requires the IGC to hire an administrative law judge, attorneys, and other personnel necessary to carry out the enforcement duties of the division. The potential personnel cost of the License Control Division is outlined below.

(1) The administrative law judge will reportedly have a broadband executive classification. If this person is paid an annual salary of \$80,000, the total annual cost of salary, fringe benefits, and indirect cost would total about \$108,000 annually.

(2) Based on salary levels of attorneys currently employed in the Legal Counsel Division of the IGC and reported in the May 2, 2007, state staffing table an attorney could potentially have an annual salary of about \$48,000. The total annual cost of salary, fringe benefits, and indirect cost for one attorney would be about \$68,000 to \$69,000.

(3) If the License Control Division also employs support personnel such as a PAT 2 employee and a COMOT 3 employee, the annual cost of salaries, fringe benefits, and indirect costs for these two employees could range from about \$87,000 to \$90,000.

Gaming Control Division: The Gaming Control Division is established by the bill, consisting of gaming control officers (who are law enforcement officers with police powers under the bill) who are required to investigate suspected violations of the professional gambling statute, the promotion of professional gambling statute, and provisions of the bill relating to the possession of, or profiting from the possession of, electronic gaming devices. The bill requires the IGC to initially staff the Division with 16 gaming control officers. The

bill requires the IGC to establish a salary matrix for gaming control officers, and provides for these officers to be members of the current State Excise Police, Gaming Agent, and Conservation Officers' Retirement Plan. The potential personnel cost of the Gaming Control Division is outlined below.

(1) The total cost of salaries, fringe benefits, and indirect costs for the 16 gaming control agents required under the bill could potentially total about \$1.0 M annually. This assumes an average salary for the gaming control agents of \$43,000. This average is based on the average salary levels reported in the May 2, 2007, state staffing table for the gaming enforcement investigators and gaming enforcement officers currently employed by the IGC.

(2) If the License Control Division also employs support personnel such as a PAT 2 employee and a COMOT 3 employee, the annual cost of salaries, fringe benefits, and indirect costs for these two employees could range from about \$87,000 to \$90,000.

Hoosier Lottery: The bill provides that violations of illegal gambling statutes are to be specified as reasons for the suspension or termination of a lottery retailer's contract with the Hoosier Lottery. Under the bill, a lottery retailer's contract could be suspended or terminated if the retailer violates the professional gambling statute, the promotion of professional gambling statute, or provisions of the bill relating to the possession of, or profiting from the possession of, electronic gaming devices.

Charity Gaming Administration: The bill makes various changes relating to administration of charity gaming by the IGC. The cost of IGC administration and enforcement of charity gaming is paid by revenue from Charity Gaming Enforcement Fund. Some of the administrative changes in the bill include the following:

(1) The bill allows a member of an organization's board of directors or board of trustees to operate and work at charity gaming events conducted by the organization. The bill also allows a full-time employee of an organization who is not a member to work at charity gaming events conducted by the organization.

(2) The bill allows parents of students in a public school, members of a public school's parent organization, or members of a public school's alumni association to operate or work at charity gaming events conducted by a public school. This is currently allowed for nonpublic schools only. In addition, the bill allows public and nonpublic school employees, officers, and students to operate or work at charity gaming events conducted by a public or nonpublic school.

(3) The bill specifies that state educational institutions and pre-elementary educational development programs are eligible to conduct charity gaming events (see *Explanation of State Revenues*).

(4) The bill changes responsibility for publishing notice of an organization's application for an annual bingo license from the IGC to the applicant organization. The bill also requires newspaper notification and specifies the number of times the notice must be published.

(5) The bill specifies reasons for which the IGC may deny a charity gaming license to an organization, or distributor's or manufacturer's licenses.

(6) The bill establishes a new annual charity game night license to allow bona fide civic and veterans organizations in existence for 10 years to conduct charity gaming nights more than one time during the year, and repeals current statute limiting an organization to four charity game nights per year (see *Explanation of State Expenditures*).

(7) The bill eliminates the license exception for raffles and door prize events if the total market value of the prize or prizes does not exceed \$1,000.

(8) The bill authorizes candidate's committees to conduct a door prize drawing at a raffle event it is licensed to conduct. Under current statute, candidate's committees may obtain a raffle license.

(9) The bill provides that a bingo license or special bingo license may authorize an organization to conduct raffle events, in addition to door prize drawings and sell pull tabs, punchboards, and tip boards at bingo events as allowed under current statute.

(10) The bill allows an organization to deduct from total gross charity gaming receipts up to \$200 per day for rent paid for facilities leased for charity gaming events in determining the net proceeds of charity gaming events that may be used only for the lawful purposes of the organization. (Note: Current statute unchanged by the bill limits the number of days per week that an organization may rent a facility for charity gaming to three days.) The bill also repeals the limit on facility rent that is set under current statute at \$200 per day.

(11) The bill allows an organization to deduct rent from total gross charity gaming receipts for purposes of determining the charity gaming license fee (see *Explanation of State Revenues*).

Penalties: The bill could potentially result in increased convictions for gambling violations and could potentially result in longer incarceration periods for these convictions. An increase in convictions of gambling crimes and longer incarceration periods could potentially affect state expenditures on DOC facilities. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The magnitude of these impacts are indeterminable. The conviction and incarceration impacts could occur due to the following changes:

(1) Investigative activities by the License Control Division and the Gaming Control Division established by the bill could potentially increase convictions for violations of the professional gambling statute and promotion of professional gambling statute.

(2) The bill increases the penalty for violation of the professional gambling and promotion of professional gambling statutes from a Class D felony to a Class C felony if the person has a prior unrelated conviction under the statutes.

(3) The bill establishes a Class A infraction for possession of an electronic gaming device, and a Class D felony for knowingly or intentionally profiting from the possession of an electronic gaming device. The bill also increases the penalty to a Class C felony if the person has a prior unrelated conviction under the latter provision.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months, and for all Class C felony offenders is approximately two years.

Explanation of State Revenues: *License Revocations Due to Illegal Gaming:* The bill could potentially result in:

(1) Revocations of charity gaming licenses, retail merchant's certificates, tobacco sales certificates, and alcoholic beverage permits.

(2) Suspensions or terminations of lottery retailer contracts.

Revocations could result in an indeterminable loss of fee revenue from retail merchant's and tobacco sales certificate holders, and alcohol beverage permit holders that are subjected to revocation. However, elimination of retailers likely would not have a marked affect on Sales Tax, Alcohol Beverage Tax, or Cigarette and Tobacco Products Tax revenue, or Lottery Sales, as consumers would probably shift their expenditures to other retail outlets. Revocation of charity gaming licenses likely would have no effect on charity gaming license fees assuming patrons would shift their expenditures to other charity gaming organizations.

Charity Gaming License Fee Determination: The bill allows a qualified organization to deduct rent paid by the organization for facilities leased for a charity gaming event from the organization's gross revenue for purposes of determining the fee for the organization's next charity gaming license. The deduction could be up to \$200 per day for rent paid for the facilities in which charity gaming events are conducted. The potential revenue loss from this change is indeterminable.

Under current statute, the license fee for qualified organizations conducting charity gaming is based on the total gross revenue earned: (1) during the prior year from charity gaming events conducted by a licensed organization; or (2) from the prior charity gaming event conducted by the organization, if the organization obtains a special one- time event license. The initial license fee is \$50. The renewal fee ranges from \$50 if total gross revenues are less than \$15,000 to the maximum renewal fee of \$26,000 if total gross revenues exceed \$3.0 M.

PPT License: The bill establishes a new annual PPT license allowing an organization to sell pull tabs, punchboards, and tip boards at any time on the premises owned or leased by the organization and regularly used for its activities. The bill specifies that this license is not required for the sale of pull tabs, punchboards, and tip boards at another charity gaming event. The practice has been that organizations obtaining an annual bingo license may use the license to only sell pull tabs, punchboards and tip boards throughout the year, even if bingo is not conducted. Under the bill, an organization would have to obtain the PPT license to conduct pull tab and other sales when other charity gaming events are not being conducted.

In FY 2005 (the latest year available), 850 annual bingo licenses were issued, with 349 of these licensees selling pull tabs but not conducting bingo. Thus, there could potentially be a significant number of organizations shifting from the annual bingo license to the PPT license. In addition, there could be organizations that ultimately would continue to obtain the annual bingo license but obtain the PPT license to sell pull tabs throughout the year. The net impact of these potential license changes on license fees is indeterminable.

Annual Charity Game Night License: The bill establishes a new annual charity game night license to allow bona fide civic and veterans organizations in existence for 10 years to conduct charity game nights more than one time during the year. Currently, the charity game night license allows the game to be conducted only on one day. The potential fiscal impact on charity gaming license fees from this new license is indeterminable.

New Charity Gaming Organizations: The bill specifies that state educational institutions and pre-elementary educational development programs are eligible to conduct charity gaming events. The extent to which these changes will increase the pool of qualified organizations that may conduct charity gaming events is unknown. The actual impact on license fee revenue would depend upon the response by these entities, and could be reduced to the extent that any additional charity gaming conducted by state educational institutions or pre-elementary educational development programs displaces existing charity gaming operations of civic, educational, other political, religious, senior citizens, or veterans organizations.

Penalties: The bill could potentially result in increased convictions for gambling violations and could potentially result in longer incarceration periods for these convictions. The bill provides for more investigative activities relating to gambling violations. It also increases penalties for repeat gambling violations under current statute, and establishes a new infraction and new felony relating operation of electronic gaming devices. (See discussion of penalty provision under Explanation of State Expenditures.)

The maximum fine for a Class C felony and a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class A infraction is \$10,000, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalties:* The bill could potentially result in increased convictions for gambling violations and could potentially result in longer incarceration periods for these convictions. The bill provides for more investigative activities relating to gambling violations. It also increases penalties for repeat gambling violations under current statute, and establishes a new infraction and new felony relating to the operation of electronic gaming devices. (See discussion of penalty provision under Explanation of State Expenditures.) If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalties:* The bill could potentially result in increased convictions for gambling violations and could potentially result in longer incarceration periods for these convictions. The bill provides for more investigative activities relating to gambling violations. It also increases penalties for repeat gambling violations under current statute, and establishes a new infraction and new felony relating to the operation of electronic gaming devices. (See discussion of penalty provision under Explanation of State Expenditures.) If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and

depending upon the particular type of criminal case.

If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Indiana Gaming Commission; Alcohol and Tobacco Commission; Department of State Revenue; Hoosier Lottery; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: *Charity Gaming Annual Report, FY 2005*, Department of State Revenue. Indiana Sheriffs' Association, Department of Correction.

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